

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 IN RE CUSTOMS AND TAX
5 ADMINISTRATION OF THE KINGDOM
6 OF DENMARK
7 (SKATTEFORVALTNINGEN) TAX
8 REFUND SCHEME LITIGATION

9 18 MD 2865 (LAK)
10 -----x

11 Conference
12

13 New York, N.Y.
14 March 5, 2025
15 2:15 p.m.

16 Before:

17 HON. LEWIS A. KAPLAN,

18 District Judge
19

20 APPEARANCES

21 HUGHES HUBBARD & REED LLP
22 Attorneys for Plaintiff SKAT
23 BY: MARC A. WEINSTEIN
24 WILLIAM MAGUIRE
25 NEIL OXFORD

26 KAPLAN RICE LLP
27 Attorneys for David Zelman, Ed Miller, Ron Altbach, Perry
28 Lerner, Robin Jones, Joe Herman and the associated plans
29 BY: MICHELLE A. RICE

30 POULOS LOPICCOLO PC
31 Attorneys for Boston Bradley, Roger Lehman, Bradley
32 Crescenzo and the associated plans
33 BY: JOSEPH LOPICCOLO

34 HANAMIRIAN LAW FIRM, PA
35 Attorneys for the Acorn plans, Gregory Summers and
36 associated plans
37 BY: JOHN N. HANAMIRIAN

38 KOSTELANETZ LLP
39 Attorneys for John Doscas, David Freelove and associated
40 plans
41 BY: ERIC SMITH

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1 APPEARANCES (Continued)

2 BINDER & SCHWARTZ LLP
3 Attorneys for MCML Limited f/k/a ED&F Man Capital Markets,
Limited
4 BY: NEIL STEPHEN BINDER5 K&L GATES LLP
6 Attorneys for Acer Investment Group, LLC and SDNY
Defendants
7 BY: JOHN C. BLESSINGTON8 GUSRÄE KAPLAN
9 Attorneys for Sheldon Goldstein and associated plans
BY: MARTIN H. KAPLAN

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THE DEPUTY CLERK: Please be seated. Mr. Toll represents George Hofmeister and related entities, JSH Farms LLC and a few other pension plans.

THE COURT: Okay. I had given Mr. Toll permission to attend by electronic media. Unfortunately, he's not getting the sound transmission from the courtroom, and I'm afraid we're going to have to proceed without him in that regard. I guess it's just one of the risks of not showing up.

Okay. So the question is where are we going from here, folks, and I had indicated some tentative thoughts in the order. I don't want Mr. Lehman and the Crescenzo brothers to feel left out. They are on my radar. So I welcome any comments from all of you about where we should go next. But I'm eager to wrap up at least all the Southern District cases in a relatively swift but appropriate period of time.

Who wants to take a whack at it first?

Mr. Weinstein?

MR. WEINSTEIN: Judge, I can just note for plaintiff that we don't object to the groupings as your Honor has laid out, or suggested at least, in the order.

THE COURT: And where would you put the Lehman and Crescenzo cases? Would you put them in the second trial or in the EDF slot?

MR. WEINSTEIN: No, in the second trial with Solo-related pension plans.

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1 THE COURT: Does anybody wish to be heard on that
2 issue on the defense side?

3 MR. LOPICCOLO: Your Honor, Joseph LoPiccolo, Poulos
4 LoPiccolo PC. I am here for Roger Lehman and Bradley
5 Crescenzo.

6 THE COURT: I'm sorry. I can't make out what you're
7 saying. Maybe go over to the lectern.

8 MR. LOPICCOLO: Joseph LoPiccolo, Poulos LoPiccolo.

9 THE COURT: This must be generational. It happens
10 when my daughter speaks. I can't listen as fast as she can
11 talk.

12 MR. LOPICCOLO: Joseph LoPiccolo, Poulos LoPiccolo PC,
13 for Roger Lehman --

14 THE DEPUTY CLERK: Try again, please.

15 MR. LOPICCOLO: Joseph LoPiccolo --

16 THE COURT: I know who you are. Your fame precedes
17 you.

18 MR. LOPICCOLO: -- for Roger Lehman --

19 THE COURT: I'm sorry. You represent Roger Lehman?
20 So you represent Mr. Lehman and Mr. Bradley Crescenzo.

21 MR. LOPICCOLO: -- and Bradley Crescenzo and the
22 associated plans, and I understand from your Honor's suggestion
23 that you envision trial two being those defendants that were
24 part of the trial one group but didn't end up being tried in
25 the first trial plus the Roger Lehman group.

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1 THE COURT: Yes. It would wrap up, I believe,
2 everybody for whom Solo acted as a custodian. Is that right,
3 not right, Mr. Weinstein?

4 MR. WEINSTEIN: It wouldn't quite do that. There
5 would still be another one of Mr. LoPiccolo's clients, Boston
6 Bradley.

7 THE COURT: Boston Bradley.

8 MR. WEINSTEIN: Although, I'm sorry --

9 THE COURT: Why would it leave that? Isn't he one of
10 the Lehman folks? It's very hard to keep everybody straight
11 with all these parties.

12 MR. WEINSTEIN: Well, without getting into too much
13 detail, for each of those folks, and I think specifically with
14 respect to Mr. Bradley, we've had some extended discussions
15 with Mr. LoPiccolo and optimistic that we wouldn't get to a
16 trial for Mr. Bradley.

17 THE COURT: What about the others of his clients?

18 MR. WEINSTEIN: We have had some discussions. We're
19 not quite as far along. I would say, your Honor, with respect
20 to all of the Solo-related defendants, we're in that posture.
21 Ultimately, I don't know that we're going to be at a trial for
22 any of them.

23 THE COURT: Okay. Let me get back to Mr. LoPiccolo.
24 Thank you.

25 MR. LOPICCOLO: Your Honor, I was going off of what

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1 Mr. Weinstein just represented to you. That was part of my
2 presentation today would be, you know, we would just ask that
3 before proceeding into trial two and everything that comes with
4 it, based on some discussions that we've had and with
5 Mr. Weinstein and his team regarding resolving the cases. And
6 we've worked --

7 THE COURT: Resolving the what?

8 MR. LOPICCOLO: Resolving the cases of Mr. Bradley and
9 the others. We've actually worked extensively over the past
10 year. Although, there was a pause because of trial one—to
11 come up with a structure that would not only work with some of
12 Mr. Bradley's cases, but I believe the other cases. And based
13 on settlements that we've entered into for my other clients,
14 which I'll categorize as not as complicated because the numbers
15 aren't as big and there aren't as many cases. We have various
16 structures that we've used and that we plan to use going
17 forward that I think, if SKAT is willing, would really
18 facilitate a settlement of many of the cases.

19 And there is varying degrees of my clients' financial
20 abilities that are left. You have Mr. Lehman who, despite the
21 numbers that he is being sued for, can't withstand -- finance a
22 trial and have money left over for potentially any sort of
23 judgment against him. So based on that, we've come up with
24 structures for different situations. And I think we're at a
25 point where if we're just given a little bit of time, and based

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1 on my client's financial situation, it would help if we had
2 just a pause where SKAT and I could really concentrate on
3 working on resolving these cases. Because we have done quite a
4 bit of work over the past year in coming up, like I said, with
5 a structure or parameter that would work with the different
6 situations.

7 THE COURT: Well, of course, we've had a very long
8 time. We're in year six or seven of this MDL. Now, I realize
9 obviously that in light of the verdict in the last case, and
10 indeed even independent of the verdict, in light of the work
11 and the understanding that everybody now has of the intricacies
12 of what went on, we're a lot closer to being able to get arms
13 around it and bring it to a resolution. And I'm mindful that
14 the numbers here initially look very large and there are
15 possibly ability-to-pay issues.

16 That was true in the case where, notwithstanding some
17 efforts to try to resolve it, that went to trial. And
18 notwithstanding all the impetus to resolve that, it just didn't
19 happen. Even with the jury out, it didn't happen. So I'm a
20 little bit reluctant to give kind of an open end, but I
21 certainly take into account what you've said. And I certainly,
22 from all points of view, would regard a settlement that
23 everybody was equally unhappy with for different reasons as
24 better than trying what I'll call the Solo scheme for a second
25 time, even from my own narrow point of view.

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1 Okay. I understand where you're coming from,
2 Mr. LoPiccolo, and I'm not unsympathetic. Have you said what
3 you wanted to tell me?

4 MR. LOPICCOLO: I think that's it. Just with respect
5 to, you know, Bradley Crescenzo, he's in no position whatsoever
6 to withstand any sort of financial burden of a trial. Even
7 with respect to paying for my time today. I don't represent
8 Gavin Crescenzo anymore, but he is in the same position. If we
9 were to go forward, or if SKAT was to push forward with the
10 trial of the Lehman and Crescenzo group, based on their
11 financial position, I just don't know what would happen.

12 THE COURT: Well, you know, there are always default
13 judgments.

14 Okay. Thank you. Mr. Weinstein?

15 MR. WEINSTEIN: May I propose this, your Honor:
16 Mindful of the fact that the case has been pending for quite
17 some time --

18 THE COURT: I'm sorry.

19 MR. WEINSTEIN: Mindful of the fact that the case has
20 been pending for a long time, and we would all like to move
21 forward. However, both in light of what Mr. LoPiccolo has said
22 and what I've heard at least from some others, I would propose
23 the following, which is to give all parties three months to
24 work on settlement, to the extent settlement can happen. Of
25 course, it could always happen after that, but at least to

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1 focus on getting settlements done, if they are settlements
2 available to be done, and coming back in three months, which
3 three months is a long period of time. On the other hand,
4 relatively it gives us time because there's a lot of
5 information to go through with respect to different defendants
6 with respect to financial information that they have to collect
7 that we have to review.

8 Typically I would say let's push forward with a
9 schedule at the same time, but it will cause various parties to
10 start having to prepare briefs and other pretrial things.
11 Perhaps their time and their money is better spent not doing
12 that and seeing if they can resolve the case. Then we could
13 come back, you know, mid-June. We would inform the Court ahead
14 of time who we think would still go to trial, and offer the
15 Court proposals with respect to how to proceed with those and
16 when.

17 THE COURT: Well, I understand where you're coming
18 from. Let me go to some related questions that seem to me
19 likely to inform what I ought to do about it.

20 There is one case that was for most purposes already
21 tried. I think it's 19-Civ.-10713, where there were a whole
22 bunch of pension plans—13, I think—that were excluded from
23 the group that were tried. I believe that's accurate, right?

24 MR. WEINSTEIN: It should be 26.

25 THE COURT: Sorry?

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1 MR. WEINSTEIN: It should be 26 plans.

2 THE COURT: I'll tell you exactly which case it was
3 and not try to do it from memory. I gave you the correct
4 number, and the plans were 2321 Capital Pension Plan and then
5 there's a list. I haven't tried to count the list, but I
6 thought it was 13. Maybe I miscounted. It's 13. It's in ECF,
7 document 954 on page 16.

8 MS. RICE: Your Honor, Michelle Rice. I have 26
9 plans, and I'm at docket No. 954, pages 9 through 16. I've
10 been referred to as "the friends and family plans," and I
11 believe that's what you're referring to.

12 THE COURT: I'm not referring to the friends and
13 family plans because that's in a different bucket on my list.

14 MS. RICE: Okay.

15 THE COURT: Those I understand because most of the
16 friends and family actually made appearances at the trial, and
17 they figured in the proof. But what's this group of 13 in that
18 one case, Mr. Weinstein?

19 MR. WEINSTEIN: I apologize. I don't have that docket
20 list in front of me, but if 2321 is one of those...

21 THE COURT: That's the first named one on that list.

22 MR. WEINSTEIN: Yes. I think those are what we called
23 the Argre-era plans that were in that group, friends and
24 family. So a different group that Ms. Rice's clients that were
25 carved out of a settlement with that group.

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1 THE COURT: Got it. Okay. That explains what they
2 are.

3 Now, in light of trial number one and the outcome in
4 trial number one, would I be wrong in thinking that these are
5 the most likely to be resolved quickly?

6 MR. WEINSTEIN: That makes logical sense. To be
7 honest, I can't recall who represents the plans themselves.
8 You would think after trial, I would remember who was the
9 beneficiary of each. I have to look back at that.

10 THE COURT: Well, it was probably Messrs. Markowitz
11 and van Merkensteijn, no?

12 MR. WEINSTEIN: No. I think my recollection is that
13 if they were the beneficiaries, then the plans would have
14 been -- we would have had a verdict on the plans. So it would
15 be plans with which they were in partnership but they were not
16 the beneficiary of the plans back in the Argre-era group.

17 THE COURT: Well, we did try Bernina and RJM Capital
18 Pension Plan Trust in the consolidated case.

19 MR. WEINSTEIN: Correct, because they were the
20 partners with the plans.

21 THE COURT: Okay.

22 MR. WEINSTEIN: Well, I go back to what your Honor
23 said makes sense because we, in effect, had jury findings with
24 respect to those plans. I just don't recall at the moment.

25 THE COURT: All right. What about the rest of the

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1 friends and family, not the Argre group but the rest? I would
2 have thought that there's nothing terribly complicated about
3 resolving those, right?

4 MR. WEINSTEIN: I don't think on the merits, although
5 I'll let Ms. Rice speak on behalf of those folks. And we have
6 already had some discussions. So, again, I think the timing --
7 the reason when your Honor says it could happen expeditiously,
8 it should, although most of the issues on these settlements are
9 ability to pay and then coming up with both, you know, back and
10 forth on the transparency on that, and then coming up with some
11 structure that works. So it does take some time.

12 I know Ms. Rice, she represents the 26 plans, and I
13 think it's five or six individuals. So we've already talked
14 since trial. I think she's putting together information, and
15 it will just take a bit of time to work through that.

16 THE COURT: All right. Then let me go on.

17 I am going to hand over orders referring, for
18 settlement purposes, groups of cases to Magistrate Judge
19 Lehrburger. What's left to do with respect to what we're now
20 looking at as the trial two bundle? We don't have a pretrial
21 order as to any of that. Does anybody foresee any substantial
22 *in limine* or *Daubert* practice to try what I'm now thinking of
23 as trial number two?

24 MR. WEINSTEIN: I think from SKAT's perspective, most
25 issues were raised in trial one, and so we would expect similar

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1 results with respect to motions. So I think it's more a matter
2 of whether any defendants have or believe they have something
3 different to say on some of those issues.

4 THE COURT: And what about defendants?

5 MR. LOPICCOLO: Joseph LoPiccolo, your Honor. Based
6 on my review of the docket—I wasn't there in trial one, but my
7 review of the docket—I would think the results on the *Daubert*
8 motions, to the extent my clients wanted to put up an expert on
9 the same exact issue to opine the same thing, I would admit
10 that the decision of trial one would probably apply to trial
11 two and vice versa to the extent -- you know, any sort of issue
12 related to *Daubert* experts or particular specific evidence,
13 documents.

14 I know there were some rulings on contributory
15 negligence, and some documents were allowed to be used and
16 others weren't. So I would think that -- the rulings on those
17 particular documents to be used for the exact same reason, I
18 would think that I would be able to come to an agreement and
19 stip to a lot of those issues.

20 THE COURT: Do any of the defendants in a trial two
21 anticipate new experts? Putting aside the question of whether
22 there's still time under the scheduling orders to date, but
23 just putting it aside for the moment.

24 MR. LOPICCOLO: At this time, no, for my defendants.

25 THE COURT: Okay. I do anticipate issuing an order to

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1 show cause in all cases as to why specific, identifiable
2 rulings, that were made in the run-up to trial, one should not
3 be accepted as binding in all the cases. I haven't come to a
4 final view as to what those will be, but obviously the revenue
5 ruling -- revenue rule is one. There are some issues relating
6 to statute of limitations and unjust enrichment in one
7 circumstance. I will put that out, and we'll see what anybody
8 has to say about it. I've done this in other MDLs, as have
9 other MDL judges, and it's usually not controversial but I'm
10 going to give everybody a chance to pitch in on it.

11 I'm not going to bind you now, but I just want to get
12 a heads up. Does anybody intend to contest the falsity of the
13 representations made to SKAT as to whether there were actual
14 share ownership situations and whether the statements about
15 having had tax withheld and being entitled to reclaim them were
16 true or not? Anybody going to contest that? It was conceded
17 in trial one, but I'd like to have a head's up if you are going
18 to make that argument here. Was I not clear enough?

19 MR. KAPLAN: I'm sorry, your Honor, I didn't follow
20 you.

21 THE COURT: That's okay. In trial number one, I can
22 say to my own surprise, but I'm not going to speak for anybody
23 else, the defense conceded on opening that none of their
24 clients ever, in fact, bought or sold any shares; that the
25 representations that were made to SKAT, that they had owned the

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1 shares on the X dividend dates, were inaccurate and that they
2 never had had any withholding tax held back, and therefore the
3 statement to the contrary were inaccurate. Anybody going to
4 contest those positions?

5 MR. BLESSINGTON: I'll walk over to the podium, your
6 Honor.

7 THE COURT: Yes. Thank you.

8 MR. BLESSINGTON: Good afternoon, your Honor. John
9 Blessington on behalf of Acer group or Acer Investment Group
10 Limited. Your Honor, we're in the ED&F tranche, if you will,
11 the third, and we will be contesting that.

12 THE COURT: As I remember, about half of the vouchers
13 provided by ED&F have been conceded to have been inaccurate.

14 MR. BLESSINGTON: Correct. I'll let Mr. Binder
15 address that, but yes, that is our position. Just to be clear,
16 that came to light in the course of a trial in the UK after
17 this case was commenced.

18 THE COURT: I understand, but you are not going to try
19 and relitigate that here, are you?

20 MR. BLESSINGTON: The only issue is whether or not our
21 client knew. That's a different issue. Whether the plans, in
22 our case Acer, was the investment adviser for those plans. And
23 just to be clear, I'm only talking about the Goldstein Acer
24 case.

25 THE COURT: Yes.

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1 MR. BLESSINGTON: Because there's another case
2 involving --

3 THE COURT: That would be trial three.

4 MR. BLESSINGTON: Correct. But there's Mr. Freelove
5 and Mr. Doscas, who also traded through ED&F. No relation.
6 That's one of the issues we have. And we don't have to do this
7 now, but we'd like to be heard on that issue as to whether or
8 not the ED&F cases should all be consolidated and tried as one.
9 But I don't want to go down that rabbit hole.

10 THE COURT: I'm not going to put the ED&F cases in
11 with the second trial.

12 MR. BLESSINGTON: Understood.

13 THE COURT: There are only four or maybe five that
14 originated in the Southern District. That's all I can try.
15 Because of the numbers alone, it's the lowest priority on my
16 list, but I appreciate your bringing it to my attention.

17 Okay. Is SKAT going to raise, in any of these cases,
18 the assertion that was originally made that the representations
19 that they were qualified plans were not true?

20 MR. WEINSTEIN: No.

21 THE COURT: Okay. Any idea from SKAT about how much
22 money is involved in trial number two—putting aside ability to
23 pay—and in trial number three?

24 MR. WEINSTEIN: The answer is yes.

25 THE COURT: You've got your roadmap almost ready. I

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1 can tell.

2 MR. WEINSTEIN: So with respect to trial number two,
3 the cases that Roger Lehman is a defendant in, which covers him
4 and essentially Mr. Crescenzo and his brother, the damages
5 there are approximately \$250 million in total. And then with
6 respect to the friends and family that were associated with the
7 trial one defendants, I have them individually. Let me just
8 add them up. I'm estimating in the neighborhood of between
9 \$160 to \$170 million, so combined --

10 THE COURT: \$400 and something?

11 MR. WEINSTEIN: Correct.

12 MR. LOPICCOLO: Your Honor?

13 THE COURT: Yes.

14 MR. WEINSTEIN: Did your Honor ask for both trials? I
15 think you did.

16 THE COURT: Yes.

17 MR. WEINSTEIN: In the trial that was proposed for the
18 ED&F cases, it's a total of approximately \$15 to \$20 million.
19 I should add, your Honor, just to make sure everything is clear
20 because you've asked about the Solo cases, in the proposed
21 trial three, there are some Solo reclaims. And where those fit
22 in are, there's two cases in that grouping where John Doscas is
23 a defendant because there are two different plans at issue.
24 For one of those, there were both ED&F Man and Solo reclaims
25 submitted by the plan, and then for the other plan, it was just

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1 Solo. But because they're both associated with Mr. Doscas, we
2 thought it still made sense to put them in that group.

3 THE COURT: Okay. That's fine.

4 MR. LOPICCOLO: Your Honor?

5 THE COURT: Yes.

6 MR. LOPICCOLO: Joseph LoPiccolo.

7 Maybe my math is off, but with respect to just the
8 SDNY cases where Roger Lehman is involved in, I have about half
9 that amount, which is \$120 million. Marc, you can let me know
10 if I'm off.

11 MR. WEINSTEIN: No, it's a good point. Now that he
12 says it, I'm looking at a Roger Lehman number that is not
13 distinguishing by jurisdiction. So I don't have the number,
14 but I'll take Mr. LoPiccolo's estimation that it was \$120.

15 MS. RICE: Your Honor, if I could put a finer point on
16 the friends and family damages, I'm assuming since the number
17 is as large as it is, that it assumes a finding of fraud, and
18 it assumes the friends and family who received in net reclaims
19 about \$2 million are being held accountable for the entire
20 fraud in that calculation.

21 THE COURT: Yeah, understood. I wouldn't be surprised
22 if you get some level of receptivity to that point in
23 discussions.

24 Okay. Then there are two pending remand motions.
25 Does anybody want to say anything about them?

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MR. HANAMIRIAN: John Hanamirian, your Honor. I have both of those motions pending, but I'm in agreement or I would like to go down the path Mr. Weinstein suggests of trying to resolve these motions, and hold the motions in abeyance until we get further down the path, if that's okay.

THE COURT: Well, I certainly hear you. Let me just tell you that I'm not going to grant your remand motions now, as you probably knew before you filed them. My view of this, in light of *Lexicon*, is that once I've done everything that I can do to contribute as much as can be done in this forum to the task of the transferor judges, these cases will go back, and I don't think we're quite there yet. I think the response to the order to show cause I referred to will get us a good part of the way there, and to whatever extent we can make progress in a relatively modest period on resolving some of these cases, even transferred cases, then if we still have cases pending, they'll go back. I have no choice about that, and I'm not troubled by that. It's perfectly fine. Six years has been enough for me, too.

If you don't think I've made it by the time, given those considerations, I should have made it, I know I'll hear from you, Mr. Hanamirian. I do, and that's fine.

MR. HANAMIRIAN: Thank you, your Honor.

THE COURT: Okay. Now, there was one other thing on my mind about this. Oh, yes. And this doesn't affect most of

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1 you, but for entirely extraneous reasons, I was reading a
2 relatively recent Supreme Court decision that contained the
3 answer to the question of whether we need a separate judgment
4 in every one of the cases, and the answer is way better yes
5 than no. And the case is *Hall v. Hall*, and it's about two
6 sentences and it's fairly recent. It had to do with whether
7 multi-district consolidation rendered what would have been a
8 final order if rendered in one of the consolidated cases was
9 non-final because it was an MDL, but they spoke precisely to
10 the separate judgment question and there it is. So that's what
11 I'm going to do. That's what I'm hoping I will get in addition
12 to whatever else I get.

13 I'm also happy to share with you that the English
14 translation of the name of one pension plan that I think is
15 behind us now in the trial means robber barons, but there it
16 is.

17 Okay. Anything else anybody else wants to raise?
18 Thank you, folks.

19 (Adjourned)

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